IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1135 of 2001
With
FIRST APPEAL No. 1136 of 2001
To
FIRST APPEAL No. 1137 of 2001
With
FIRST APPEAL No. 1139 of 2001
With
FIRST APPEAL No. 1141 of 2001
To
FIRST APPEAL No. 1149 of 2001
With
FIRST APPEAL No. 1151 of 2001
With
FIRST APPEAL No. 1153 of 2001
&
FIRST APPEAL No. 1154 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT
Versus
PRANJIVANBHAI JERAMBHAI

==========

Appearance :
MR ND GOHIL, AGP for Appellant.
NOTICE SERVED for Respondent.
==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/07/2006

COMMON ORAL JUDGMENT

By preferring these appeals, the State has challenged the judgement and order passed by the learned Assistant Judge, Morvi dated 13th January, 1995, by which the learned Judge has disposed of various land references by a common judgement, being Land Reference Case Nos.224/1987 to 246/1987 and Land Reference Case No.171/1987.

So far as First Appeal No.1135/2001 to First Appeal No.1137/2001 are concerned, the same are filed challenging the order passed in Land Reference Case Nos.224/1987 to 226/1987, while First Appeal No.1139/2001 is filed against the order passed in Land Reference Case No.228/1987. In the same way, First Appeal Nos.1141 to 1149/2001, First Appeal No.1151/2001 and First Appeal No.1153/2001 and 1154/2001 are filed against the order passed in Land Reference Case Nos.230/1987 to 238/1987, Land Reference Case No.240/1987 and Land Acquisition Reference Nos.242/1987 and 243/1987 respectively.

On behalf of the State Government, a proposal was moved for acquiring certain lands of village – Jetpar for Godhadhroy Irrigation Canal. Notification under Section 4 o the Act was issued on 28-8-1983, which followed notification under Section 6 of the Act, which was issued on 14-3-1985. After holding an inquiry under Section 9 of the Act, the Deputy Collector has declared his award on 28-2-1986. As per the award declared by the Deputy Collector, compensation at the rate of Rs.60 per

Are for Jirayat land and Rs.90/- per Are for Bagayat land was awarded. However, the claimants were not satisfied by said award of the Land Acquisition Officer, therefore, at their instance various land references were referred to the District Court under Section 18 of the Act by the Land Acquisition Officer. There were various references before the District Court, which were numbered as Land Reference Case Nos.226/1987 to 246/1987 and Land Reference Case No.171/1987. Since common question of law and facts were involved in all those cases, learned Judge of the Reference Court has decided all the cases together and common evidence was led in Land Acquisition Reference No.224/1987. After considering the evidence on record, learned Judge of the reference Court came to the conclusion that the market value fixed by the Land Acquisition Officer is not correct. Accordingly, learned Judge has fixed the amount at the rate of Rs.210/- per Are in connection with Jirayat land.

Being aggrieved by the aforesaid order of the Reference Court, the State has preferred present group of appeals.

It is pointed out by learned AGP that in all these appeals, the Court is concerned only with Jirayat land.

Mr.N.D.Gohil, learned AGP submitted that the learned trial Judge has erred in awarding additional compensation at the rate of Rs.210/- per Are.

Before the reference Court, the claimants have demanded additional compensation at the rate of Rs.300/- per Are towards Jirayat land. On behalf of the claimants, index of the sale instances were produced at Exh.16 to 22 and sale deed was produced at Exh.23. On

behalf of the acquiring body, index of sale instances of village – Jetpar were produced at Exh.29 to Exh.32 before the trial Court.

Learned trial Judge has considered various sale instances for reaching to the correct valuation of the land in question. Learned trial Judge has relied upon Exh.17, 19 and 22 for fixing appropriate price of the land in question. So far as sale instance at Exh.17 is concerned, it was found that the price of said land was Rs.147/- per Are and while so far as land involved in Exh.19 is concerned, price of that land was found to be Rs.375/- per are and price of the land at Exh.22 was found to be Rs.108/- per Are. All the aforesaid lands are of village – Jetpar. Learned trial Judge has taken average price of the said sale instances, as the period of transaction was deferring. On behalf of the claimants, sale instances at Exh.16, 18, 20 were also produced, however, the learned trial Judge has rightly discarded the same, as the said transactions were in connection with village – Chakhampar, Aniyari and Rapar respectively. Accordingly, the learned Judge has given more weightage to the sale instances of that very village – Jetpar.

Learned Judge also considered sale instance produced by the acquiring body at Exh.29 to Exh.32. However, the learned Judge has not given any weightage to them as per the reasonings given in paragraph 13 of the judgement.

Learned trial Judge has ultimately taken average price of the sale instances produced by the applicants (which were of different period) and fixed Rs.210/- per Are for Jirayat land. Said average price is fixed on the basis of the sale instance dated 21-4-1981, 26-3-1982 and 20-9-1984. Learned Judge has taken into consideration notification under Section 4 of the Act, which is dated 28-8-1983 in the present case and

ultimately, fixed the price of Rs.210/- per Are for Jirayat land, as it was found to be just and adequate value of the land. Learned Judge has rejected the claim of the claimants regarding trees on the ground that no evidence is produced to show as to how many trees were there in the field at the relevant time. Similarly, claim regarding Bandh-pala, pipeline etc., is also rejected. On the basis of aforesaid fixation, the references were partly allowed with interest and solatium as per the provisions of the Land Acquisition Act.

As per the judgement of the learned trial Judge, the State was required to pay additional amount of compensation as under :

Sr.No.	**Reference No.**	**Additional amount awarded by the Reference Court (in Rupees)**
1.	224/1987	8,683.56
2.	225/87	9,676.56
3.	226/87	24,069.90
4.	228/87	15,525.00
5.	230/87	3,643.00
6.	231/87	9,853.20
7.	232/87	5,313.00
8.	233/87	4,197.60
9.	234/87	3,932.75
10.	235/87	8,326.91
11.	236/87	5,297.92
12.	237/87	9,952.56
13.	238/87	9,215.64
14.	240/87	14,628.00
15.	242/87	9,232.20
16.	243/87	6,061.02

It is fairly pointed out by learned AGP, Mr.Gohil, that in a similar group of matters being First Appeal Nos.2220/2001 to 2229/2001 with First Appeal Nos.2231/2001 to 2235/2001, land was acquired for the same purpose from the same village and this Court has dismissed aforesaid group of First Appeals on the ground of petty claim. He, however, submitted that in aforesaid cases, the amount was fixed at the rate of Rs.280/- per Are regarding Jirayat land. While disposing of aforesaid First Appeals on 4-5-2006, learned Single Judge of this Court has held as under in paragraphs 5 and 6 :

> "5. It is required to be noted and not disputed by any of the parties that none of the original claimants is awarded more than Rs.30,000/-. Under the circumstances and considering the judgment and order passed by this court passed in First Appeal Nos.7169/99 to 7198/99, the present appeals are required to be dismissed only on the ground of smallness of amount with an observation that the awards in question may not be cited as a precedent, as this Court has not confirmed the same on merits and this Court is dismissing the appeals only on the ground of smallness of amount.
>
> 6. For the reasons stated above, all the First Appeals are dismissed only on the ground of smallness of amount. However, there will be no order as to costs. However, without expressing any opinion on merits, it is observed that by dismissal of these appeals, the judgment and award in question may not be treated as having been confirmed on merits and that the said judgment and awards may not be cited as a precedent."

It is pointed out to the Court that the lands in question and the land involved in the aforesaid First Appeals were of the same village and were sought to be acquired for the same purpose. Notification under Section 4 of the Act was issued in the present case on 28-8-1983, and though it is written in the judgement of aforesaid First Appeals that notification under Section 4 of the Act was issued in those matters on

30th April, 1985, learned AGP has submitted that the same was issued on 28-3-1985.

In the instant case, the trial Court has granted Rs.210/- per Are, while in the aforesaid First Appeals, it was granted at Rs.280/- per Are, however, that may be because the notification under Section 4 was issued at a later point of time.

Be that as it may, it is not in dispute that the for same project, lands were also acquired wherein owners of the land were granted compensation at the rate of Rs.280/- per Are for Jirayat land and learned Single Judge of this Court has dismissed the First Appeals preferred against that order, only on the ground of smallness of claim. In the instant case, it is fairly submitted by learned AGP that in none of the appeals additional amount of compensation is more than Rs.30,000/- as per the order of the Reference Court. In fact, in all these cases, it is less than Rs.25,000/- as per the chart and in most of the cases the amount is less than Rs.10,000/-.

On the ground of parity, this Court now cannot entertain these appeals on merits and it is required to be dismissed on the ground of smallness of the claim as similar appeals have been dismissed by learned Single Judge of this Court, which relates to the acquisition of land of the same village for the same project.

It is required to be noted that a similar view is taken by another learned Single Judge of this Court while deciding First Appeal No.1117/2003, and held as under :

“3. It may be noted that learned single Judge of this Court as

well as a Division Bench of this Court in number of matters have dismissed appeals filed by the appellant challenging the awards of the reference courts on the ground of smallness of the amount. The Division Bench of this Court (Coram: M.H. Kadri & C.K.Buch, JJ.) in First Appeal Nos.6765 of 1999 to 6804 of 1999 vide judgment dated 29.3.2000 has considered an amount of RS.25,500/- awarded to the claimant, without considering other statutory benefits, as small amount. In the said judgment it has been observed that it is the consistent practice which is followed by various Division Benches of this Court that wherein claim involved in the Land References cases is less than Rs.35,000/-, appeal should be dismissed on the ground that it involves petty claim.

4. Applying the principles laid down by the Division Bench of this Court in the judgment recorded in First Appeal Nos.6765 of 1999 to 6804 of 1999 to the facts of the present case, in the instant case, the original amount awarded to the respondent is Rs.11,425/- plus statutory benefits, which comes in all to Rs.16,223.50 and, therefore, this amount being a small amount, the appeal deserves to be dismissed on the ground of petty claim.

5. For the foregoing reasons, the appeal fails and is accordingly dismissed with no order as to costs."

Considering the aforesaid aspect of the matter and considering the fact that identical group of matters has been dismissed by learned Single Judge of this Court, which was in connection with land of the same village and which was acquired for the same project, even on the basis of maintaining parity, these First Appeals are required to be dismissed on the ground of smallness of claim. Accordingly, all these First Appeals are dismissed with no order as to costs.

Record and Proceedings to be sent back.

(P.B.MAJMUDAR, J.)

/malek